

Chicago Daily Law Bulletin®

Volume 162, No. 65

Serving Chicago's legal community for 161 years

ARDC looks to stay ahead of curve

The Attorney Registration & Disciplinary Commission's 2016 registration form required new details from attorneys in private practice. The questions were added pursuant to recently amended Supreme Rule 756, which now compels disclosure of "the type of entity at which the attorney practices law, the number of attorneys in that organization, the principal areas of law in which the attorney practices and whether that organization has established a written succession plan."

The final count is not complete, but according to the ARDC, initial responses from sole practitioners could lead to more regulation in years to come.

Only one in six solos report written succession plan

James J. Grogan is the ARDC's deputy administrator and chief counsel. With more than 35 years at the agency, Grogan knows from experience the importance of tracking how lawyers run their firms. Keeping an eye on current trends is a key factor in formulating effective regulatory and disciplinary strategies.

While the formal results await the ARDC's next annual report, Grogan shared preliminary returns from sole practitioners on the pivotal issue of succession planning.

It is vitally important for solos to make end-of-practice arrangements, Grogan explained, as there are no in-house colleagues to assume control in the event of death or disability.

Early figures provide ample cause for concern. Grogan reports that only 16 percent of sole practitioners — roughly one in six — have a written succession plan in place. On top of that troubling statistic, Grogan points out that more than 40 percent of solos report they do not carry malpractice insurance.

As more lawyers approach retirement age, Grogan is concerned the lack of formal succession planning — aggravated by the lack of insurance in some cases — could be problematic for solos, their family members and clients. There is also added stress on state-funded projects such as the ARDC's client protection program.

A proactive approach to attorney regulation and discipline

Although the current national model of attorney discipline is reactive — charges are brought after infractions occur — the ARDC is considering a more proactive form of attorney regulation going forward.

Known as proactive management-based regulation, this model has gained traction overseas in recent years. Instead of focusing primarily on after-the-fact enforcement, the new system emphasizes forward-looking measures to anticipate and avoid ethical lapses.

In such proactive jurisdictions overseas, agency resources are used to teach lawyers what programs and systems are needed to operate their firms effectively and ethically, thus avoiding potential problems with clients and regulators.

In Australia, for example, lawyers must assess and attain objectives in 10 discrete areas, including billing practices, conflicts of interest, employee supervision and trust accounts. Each firm must establish for regulators that each self-assessment process has been completed.

In the United States, regulators are starting to give the proactive approach a serious look. In Colorado, the state supreme court set up a subcommittee to study the model and already implements proactive procedures such as providing a self-audit checklist for small firms and sending high-risk attorney groups a letter describing

SOLE SPEAK



GLENN E. HEILIZER

Glenn E. Heilizer is a veteran litigator, sole practitioner and is the founder of the Sole Practitioners Bar Association of Illinois. He handles commercial disputes in the federal, state and appellate courts in Illinois and Wisconsin. He welcomes all questions and comments. He can be reached at glenn@heilizer.com.

ways to avoid common pitfalls.

The ARDC's review of the proactive system is in the early stages, but Grogan sees the value of proactive regulation. In days gone by, Grogan notes, more sole practitioners obtained support through informal mentoring and office-sharing arrangements. Today's legal arena is driven by technology, which can have isolating effects and leaves many solos completely on their own.

Given the sizable number of sole practitioners without formal plans to transition their practice when the unexpected occurs, proactive involvement by the ARDC may be needed. And preventative safeguards could assist in other areas as well. "The commission wants lawyers to succeed, period," Grogan pointed out, and the proactive approach could help ensure that "as many of our attorneys as possible are successful."

Self-regulate your practice with planning tools

Whether or not the ARDC implements such a proactive system going forward, solos should take basic steps now to protect their firms and avoid potential missteps.

First, complete a self-audit to check for potential trouble spots in your practice. A sample audit checklist is available on the Colorado Supreme Court's website at coloradosupremecourt.com. Address any identified deficiencies and ensure your firm's future.

Second, make a written succession plan. The Colorado Supreme Court's website also has a downloadable guide for succession planning. Sample form agreements are included. Do not wait for the ARDC to make it mandatory. Draft a plan now and protect the practice you worked so hard to build.

Third, if you are not yet insured, consider including that cost in this year's budget. Affordable coverage is available with limits as low as \$100,000. Not only will your policy provide a measure of protection, but many insurers offer Continuing Legal Education courses, consultation hotlines and printed materials that can assist in the present.

Lastly, ask for help if needed. Among other options, join the Sole Practitioners Bar Association of Illinois at ilsolo-bar.org for free and access its website for links to sample attorney succession guides and forms. You also can post confidential requests to other members to serve as succession counsel and seek additional support in other areas.

Grogan knows that proactive regulation will not pre-empt every discipline problem, but the failure to engage in succession planning is an obvious omission that can be cured.

It is fair to assume that, sooner or later, the Illinois Supreme Court will make written succession planning mandatory. Gain peace of mind by making arrangements now, and you will be in compliance when it becomes the law of the land.